

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
VARIANCE PERMIT DENIED BY
SPOKANE COUNTY TO ROSCOE BELL,

ROSCOE BELL,

Appellant,

v.

SPOKANE COUNTY and STATE OF
WASHINGTON, DEPARTMENT OF
ECOLOGY,

Respondent .)

SHB No. 87-38

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter is the Request for Review of the denial of a variance permit relating to shoreline setbacks.

The matter came on before the Shorelines Hearings board, Wick Dufford, Chairman, Nancy Burnett, Thomas R. Cowan, and Ronald T. Bailey, Members.

William A. Harrison, Administrative Appeals Judge presided.

The hearing was conducted at Spokane on May 5, 1988.

1 Appellant appeared by John Montgomery, Attorney at Law.
2 Respondent Spokane County appeared by James P. Emacio, Deputy
3 Prosecuting Attorney. Respondent Department of Ecology did not
4 appear, but filed a pre-hearing brief. Court Reporter Virginia N.
5 Recanzone recorded the proceedings.

6 Witnesses were sworn and testified. Exhibits were examined. The
7 Board and Administrative Appeals Judge viewed the site of the proposed
8 development in the company of the parties. From testimony heard and
9 exhibits examined, the Shoreline Hearings Board makes these

10 FINDINGS OF FACT

11 I

12 This matter arises on the Little Spokane River in Spokane County.

13 II

14 The site is a vacant lot of approximately 1 1/2 acres bordering
15 the River. This lot was created in 1954 by a conveyance. The lot is
16 recognized by Spokane County as a separate tax parcel.

17 III

18 In 1979 the lot was purchased by Mr. Gary Baker. He installed a
19 well and septic system. He further obtained a building permit for
20 placing a double wide manufactured home on the lot. Mr. Baker did
21 not, in fact, place any home on the lot.

22 IV

23 In 1984, Mr. Baker sold the lot to appellant, Mr. Roscoe Bell.
24 Mr. Bell's son is married to Mr. Baker's daughter. Despite this, the
25

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1 sale of the lot from Baker to Bell was conducted at arm's length for a
2 substantial price. Mr. Bell purchased the lot for the express purpose
3 of putting his retirement home there. Mr. Bell also obtained a
4 building permit from Spokane County to install a double wide
5 manufactured home. This was subsequently revoked by Spokane County
6 when the County realized that shoreline variances would be required
7 for the proposed development. Mr. Bell then applied for the necessary
8 shoreline variances.

9 V

10 The shoreline variance process caused Mr. Bell to reconsider the
11 scale of his proposal. Consequently, he reduced his proposal from a
12 double wide to a single wide manufactured home.

13 VI

14 The following provisions of the Spokane County Shoreline Master
15 Program (SCSMP) would not be met by the single-wide proposal and would
16 therefore necessitate variance:

17 1. Section V, Paragraph 5.10, page 4-8 requiring structures to be
18 set back 50 feet from the ordinary high water mark. The proposed
19 single-wide home would be approximately 25 feet from the ordinary high
20 water mark.

21 2. Section V, Paragraph 9.2.11, page 4-18 which prohibits a
22 sanitary disposal facility (such as a septic tank) "(1) in an area
23 having a history of flooding, (2) where it will be in hydraulic
24 continuity with a stream or lake, or (3) where the ground water table
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1 rises to or exists within 10 feet of the bottom elevation of the
2 drainfield or dry pit, or (4) where it will be within 100 feet of the
3 normal high-water line." The proposed sanitary disposal system is a
4 sand filter type. The groundwater seasonally rises to within 1/2 to 1
5 1/2 feet below where the system would be located. The system would be
6 55 feet from the normal high water line.

7 VII

8 Preliminary approval of the sand filter disposal system was
9 granted by the Spokane County Health District and the State Department
10 of Social and Health Services. Nevertheless, the soils in question
11 are of a wetland (Peone) type, and pose wetness problems for any
12 sanitary system. While the sand filter system is better than an
13 ordinary septic system it cannot reliably prevent entry of wastes to
14 the river, via groundwater, as proposed.

15 VIII

16 There are a number of other small lots along the river comparable
17 in size to the one at issue.

18 While sanitary wastes from the Bell sand filter system may not
19 cause perceptible harm to the River, the cumulative effect of further
20 sanitary system variances similar to this one would adversely effect
21 the River. Spokane County has not previously granted any variance
22 from its 100 foot shoreline setback rule for sanitary disposal systems.

23 IX

24 The 100 year flood plain of the River comes 10 to 12 feet onto the
25

1 site, though not so far as the proposed location of the home. The
2 western 2/3 of the site, again not where the home is proposed, has
3 been affected by flooding. In one year, water crossed over the site
4 completely, as well as the adjacent road, and beyond.

5 X

6 Bank erosion results in soil loss near the site. The adjacent lot
7 (to the east) has lost 6 feet of bank in the past 11 years.

8 XI

9 On July 14, 1987, Spokane County denied the requested shoreline
10 variances. Mr. Bell filed his request for review before this Board on
11 August 26, 1988.

12 XII

13 Any Conclusion of Law deemed to be a Finding of Fact is hereby
14 adopted as such. From these Findings of Fact, the Board makes these

15 CONCLUSIONS OF LAW

16 I

17 The applicable criteria for the variance at issue is that adopted
18 by the State Department of Ecology at WAC 173-14-150. This states, in
19 pertinent part:

20 WAC 173-14-150 Review criteria for variance permits.
21 The purpose of a variance permit is strictly limited to
22 granting relief from specific bulk, dimensional or
23 performance standards set forth in the applicable master
24 program where there are extraordinary or unique
25 circumstances relating to the property such that the
26 strict implementation of the master program will impose
27 unnecessary hardships on the applicant or thwart the
policies set forth in RCW 90.58.020.

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(5)

1 (1) Variance permits should be granted in a
2 circumstance where denial of the permit would result in
3 a thwarting of the policy enumerated in RCW 90.58.020.
4 In all instances extraordinary circumstances shall be
5 shown and the public interest shall suffer no
6 substantial detrimental effect.

7 (2) Variance permits for development that will be
8 located landward of the ordinary high water mark (OHWM),
9 as defined in RCW 90.58.030(2)(b), except within those
10 areas designated by the department as marshes, bogs, or
11 swamps pursuant to chapter 173-22 WAC, may be authorized
12 provided the applicant can demonstrate all of the
13 following:

14 (a) That the strict application of the bulk,
15 dimensional or performance standards set forth in the
16 applicable master program precludes or significantly
17 interferes with a reasonable use of the property not
18 otherwise prohibited by the master program;

19 (b) That the hardship described in WAC
20 173-14-150(2)(a) above is specifically related to the
21 property, and is the result of unique conditions such as
22 irregular lot shape, size, or natural features and the
23 application of the master program, and not, for example,
24 from deed restrictions or the applicant's own actions:

25 (c) That the design of the project is compatible
26 with other permitted activities in the area and will not
27 cause adverse effects to adjacent properties or the
28 shoreline environment;

29 (d) That the requested variance does not constitute
30 a grant of special privilege not enjoyed by the other
31 properties in the areas, and is the minimum necessary to
32 afford relief; and

33 (e) That the public interest will suffer no
34 substantial detrimental effect.

35 (3) . . .

36 (4) In the granting of all variance permits,
37 consideration shall be given to the cumulative impact of
38 additional requests for like actions in the area. For
39 example if variances were granted to other developments
40 in the area where similar circumstances exist the total
41 of the variances shall also remain consistent with the
42 policies of RCW 90.58.020 and shall not produce
43 substantial adverse effects to the shoreline environment.

II

WAC 173-14-150(2)(a)

Preclusion or Interference with a Reasonable Use.

The strict application of the 50 foot setback for structures and related setback for septic systems does preclude or significantly interfere with residential use of the property. Residential use is a reasonable use of the property aside from these dimensional concerns. The proposed variances are consistent with WAC 173-14-150(2)(a).

III

WAC 173-14-150(2)(b)

Hardship the result of Unique Conditions.

The hardship in this matter results from the irregular lot size and the application of the master program. On the particular facts in this case, we cannot say that this hardship was of the applicant's own making. The proposed variances are consistent with WAC 173-14-150(2)(b).

IV

WAC 173-14-150(2)(c).

Design Will Not Cause Adverse Effects.

The design of the project is likely to cause adverse effects in two respects. First, the proposed sanitary disposal system is in sufficient proximity to both ground and surface water to create an adverse effect on water quality. Second, the proximity of the home to

1 the River itself renders it vulnerable to damage from flooding and
2 river erosion. The proposed variances are not consistent with WAC
3 173-14-150(2)(c).

4 V

5 WAC 173-14-150(2)(d)

6 Special Privilege.

7 The proposed variance for sanitary disposal system setback would
8 confer a special privilege upon the applicant not enjoyed by other
9 property owners. The proposed variances are not consistent with WAC
10 173-14-150(2)(d).

11 VI

12 WAC 173-14-150(2)(e)

13 Public Interest.

14 There would be a substantial detrimental effect upon the public
15 interest in granting these variances which have been determined to
16 cause adverse effects to the shoreline environment. The proposed
17 variances are not consistent with WAC 173-14-150(2)(e).

18 VII

19 WAC 173-14-150(4)

20 Cumulative Impact.

21 Were variances granted to other residential developments on
22 similarly small lots so as to similarly locate sanitary disposal
23 systems near the River, the total of these variances would be
24 inconsistent with the policies of RCW 90.58.020.

25
26 FINAL FINDINGS OF FACT
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1 That statutory section contemplates protecting against adverse
2 effects to the public health, the land and its vegetation and
3 wildlife, and the waters of the state and their aquatic life. The
4 cumulative impact of variances such as these is at odds with such
5 protection. The proposed variances are not consistent with WAC
6 173-14-150(4).

7 VIII

8 Variances may be authorized when the applicant can demonstrate
9 consistency with all of the subparts of WAC 173-14-150(2) and
10 consistency with WAC 173-14-150(4). Appellant's proposed variance are
11 inconsistent with WAC 173-14-150-(2)(c), (d) and (e), and are also
12 inconsistent with WAC 173-14-150(4). The denial of this variance
13 proposal by Spokane County should be affirmed.

14 IX

15 Any Finding of Fact deemed to be a Conclusion of Law is hereby
16 adopted as such. From these Conclusions of Law, the Board enters this
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ORDER

The denial of a shoreline variance permit by Spokane County is affirmed.

DONE at Lacey, WA, this 2nd day of August, 1988.

SHORELINES HEARINGS BOARD

Wick Dufford

WICK DUFFORD, Chairman

Nancy Burnett

NANCY BURNETT, member

Thomas R. Cowan

THOMAS R. COWAN, Member

Ronald T. Bailey

RONALD T. BAILEY, Member

William A. Harrison

WILLIAM A. HARRISON
Administrative Appeals Judge